

THE GAZETTE OF INDIA
EXTRAORDINARY
PART –III– SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, AUGUST 11, 2008
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the 11th August, 2008

SECURITIES AND EXCHANGE BOARD OF INDIA
(STOCK BROKERS AND SUB- BROKERS) (AMENDMENT) REGULATIONS, 2008

No. LAD-NRO/GN/2008/20/134766. - In exercise of the powers conferred by section 30 of the Securities And Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Stock Brokers and Sub- Brokers) Regulations, 1992, namely :-

1. These regulations may be called the Securities and Exchange Board of India (Stock Brokers And Sub- Brokers) (Amendment) Regulations, 2008.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Stock Brokers And Sub- Brokers) Regulations, 1992–
 - (i) in regulation 2-
 - a. in clause (ae), after the words “derivatives segment of an exchange” the words “or currency derivatives segment of an exchange” shall be inserted;
 - b. in clause (gd), after the words “derivatives segment of a stock exchange” the words “or currency derivatives segment of a stock exchange” shall be inserted.
 - (ii) In regulation 16 I, in sub-regulation (4), for the words “regulation 26” occurring at the end, the words “Chapter VI” shall be substituted.
 - (iii) After Chapter IIIA, the following Chapter and regulations shall be inserted, namely:-

“CHAPTER III B
REGISTRATION OF TRADING AND CLEARING MEMBERS OF
CURRENCY DERIVATIVES SEGMENT

Application for registration of trading member or clearing member.

16J. (1) An application for grant of certificate of registration by a trading member of currency derivatives segment of a stock exchange shall be made in Form AB of Schedule I, through the concerned currency derivatives segment of a stock exchange of which he is a member.

(2) An application for grant of certificate of registration by a clearing member of the clearing corporation or clearing house of currency derivatives segment of a stock exchange, shall be made in Form AB of Schedule I, through the concerned clearing corporation or clearing house of which he is a member:

Provided that a trading member who also seeks to act as a clearing member shall make separate applications for each activity in Form AB of Schedule I.

(3) The currency derivatives segment or clearing house or corporation, as the case may be, shall forward the application to the Board as early as possible but not later than thirty days from the date of its receipt.

Furnishing of information, clarification, etc.

16K. (1) The Board may require the applicant or the concerned stock exchange or segment or clearing house or corporation to furnish such other information or clarifications, regarding the trading and settlement in currency derivatives and matters connected thereto, to consider the application for grant of a certificate.

(2) The applicant or its principal officer shall, if so required, appear before the Board for personal representation.

Consideration of application.

16L. (1) The Board shall take into account for considering the grant of a certificate all matters relating to dealing and settlement in currency derivatives and in particular the following, namely, whether the applicant—

- (a) is eligible to be admitted as a trading member of currency derivatives segment of a stock exchange and/or a clearing member of currency derivatives segment of a stock exchange or a clearing corporation or a clearing house;
- (b) has the necessary infrastructure like adequate office place, equipment and man-power to effectively undertake his activities;
- (c) is subjected to disciplinary proceedings under the rules, regulations and bye-laws of any stock exchange with respect to his business as a stock broker or member of currency derivatives segment or member of clearing house or corporation involving either himself or any of his partners, directors or employees;
- (d) has any financial liability which is due and payable to the Board under these regulations.

(2) An applicant who desires to act as a trading member, in addition to complying with the requirements of sub-regulation (1), shall have a networth of Rs. 1 Crore and shall ensure that its approved user and sales personnel have passed a certification programme approved by the Board:

Provided that the Board may grant exemption to a trading member from the requirement of certification as provided under sub-regulation (2) for a period extending upto one year from the date of commencement of the Securities and Exchange Board of India (Stock Brokers And Sub- Brokers) (Amendment) Regulations, 2008.

(3) An applicant who desires to act as a clearing member, in addition to complying with the requirements of sub-regulation (1), shall have a minimum net worth of Rs. 10 crore and shall deposit at least a sum of Rs. 50 lacs or higher amount with the clearing corporation or clearing house of the currency derivatives segment in the form specified from time to time.

Explanation : For the purpose of sub-regulations (2) and (3) the expression 'net worth' shall mean paid up capital and free reserves and other securities approved by the Board from time to time (but does not include fixed assets, pledged securities, value of member's card, non-allowable securities (unlisted securities), bad deliveries, doubtful debts and advances (debts or advances overdue for more than three months or debts or

advances given to the associate persons of the member), prepaid expenses, losses, intangible assets and 30% value of marketable securities).

Procedure for registration.

16M. The Board on being satisfied that the applicant is eligible, shall grant a certificate in Form DB of Schedule I, to the applicant and send an intimation to that effect to the currency derivatives segment of the stock exchange or clearing corporation or clearing house, as the case may be.

Procedure where registration is not granted.

16N. (1) Where an application for the grant of a certificate under regulation 16J does not fulfill the requirements specified in regulation 16L of the Regulations, the Board may reject the application of the applicant after giving a reasonable opportunity of being heard.

(2) The refusal to grant the certificate of registration shall be communicated by the Board within 30 days of such refusal to the currency derivatives segment of the stock exchange, or clearing house or corporation and to the applicant stating therein the grounds on which the application has been rejected.

(3) An applicant may, if aggrieved by the decision of the Board under sub-regulation (2) apply within a period of thirty days from the date of receipt of such information to the Board for reconsideration of its decision.

(4) The Board shall reconsider an application made under sub-regulation (3) and communicate its decision as soon as possible in writing to the applicant and to the currency derivatives segment of the stock exchange or clearing house or corporation.

Effect of refusal of certificate of registration.

16O. An applicant, whose application for the grant of a certificate of registration has been refused by the Board, shall not, on and from the date of receipt of the communication under sub-regulation (2) or sub-regulation (4) of regulation 16N, deal in or settle the currency derivatives contracts as a member of the currency derivatives segment of the stock exchange or clearing corporation or clearing house.

Payment of fees and consequences of failure to pay fees.

16P. (1) Every applicant eligible for grant of a certificate as a trading or clearing member shall pay such fee and in such manner as specified in Schedule IVA.

(2) Where a trading or clearing member fails to pay the fees as provided in sub-regulation (1), the Board may suspend or cancel the registration certificate after giving an opportunity of being heard, whereupon the trading and clearing member shall cease to deal in or settle the currency derivatives contract as a member of currency derivatives segment of stock exchange or clearing corporation or clearing house.

Trading member/clearing member to abide by the code of conduct, etc.

16Q. (1) The code of conduct specified for the stock brokers as stipulated in Schedule II, shall be applicable *mutatis mutandis* to the trading member, clearing member and such members shall at all times abide by the same.

(2) The trading member and clearing member shall abide by the code of conduct as specified in the rules, bye-laws and regulations of currency derivatives segment of the stock exchange.

(3) The trading members shall obtain details of the prospective clients in 'know your client' format as specified by the Board before executing an order on behalf of such client.

(4) The trading member shall mandatorily furnish 'risk disclosure document' disclosing the risk inherent in trading in currency derivatives to the prospective clients in the form specified by currency derivatives segment of the stock exchange.

(5) The trading or clearing member shall deposit margin or any other deposit and shall maintain position or exposure limit as specified by the Board or the concerned exchange or segment or clearing corporation or clearing house from time to time.

Applicability of Chapters IV, V and VI.

16R. (1) The provisions of Chapters IV, V and VI shall be applicable *mutatis mutandis* to a trading member and a clearing member and such members shall abide by the provisions of the said Chapters.

(2) In the chapters referred to in sub-regulation (1), the words 'stock broker' shall refer to trading member or clearing member and the words 'stock exchange' shall refer to currency derivatives segment of a stock exchange or clearing corporation or clearing house.

(3) The Board may issue such directions under section 11B of the Act to the trading member or clearing member as may be deemed appropriate and such member shall abide by such directions.

(4) In case of violation of any regulation, the trading or the clearing member shall be liable to penalty as specified in Chapter VI."

(iv) In Schedule I –

(a) after Form AA, the following Form shall be inserted, namely:-

“FORM AB

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

[Regulation 16J]

Application form for registration as a trading and/or a clearing member of currency derivatives segment of a stock exchange with the Securities and Exchange Board of India

1. Name of the currency derivatives segment of a stock exchange/clearing corporation/clearing house of which the applicant is the member. Please furnish the tenure of membership.
2. Name of the member with code No.
3. Whether the applicant is to act as a trading member and/or a clearing member.
4. If the applicant is to act as a trading member, the applicant is required to furnish the name and details of the clearing member through whom he intends to clear and settle his trade.
5. Address of the member.
6. Trade name of member.
7. Form of organisation: sole proprietorship/partnership/corporate body/financial institution. (Please give names of proprietor/ partners/directors).
8. Please furnish a copy of the memorandum and articles of association or the partnership deed, as the case may be.

9. Educational qualifications of proprietor/partners/directors, etc.
10. Whether the applicant or its sales personnel or approved user has passed any certification programme? If so, please specify the detail.
11. The experience of the applicant or their two directors or partners in currency derivatives trading or securities market, if so, please give details.
12. Date of admission to membership to currency derivatives segment of a stock exchange/clearing corporation/clearing house.
13. Whether a member of more than one exchange or currency derivatives segment of a stock exchange or clearing corporation or clearing house of any segment? If so, please give name(s) of the clearing corporation/clearing house, or any stock exchange(s) with code number(s)?
14. Net worth of the applicant. Please furnish details along with necessary documents in support thereof.
15. Whether the applicant or its director or partners, any time convicted of any economic offence? If so, please furnish the details?
16. Whether the applicant or its directors or partners, declared insolvent/bankrupt or declared defaulter by any exchange? If so, please furnish details.
17. Whether the applicant or its directors or partners at any time subjected to any proceedings or penalty by the Board under the SEBI Act or any of the regulations framed under the SEBI Act? If so, please furnish the details.
18. Indicate fax, telex and phone number(s).
19. Whether the application is accompanied by a requisite fee as per Schedule IVA of the Regulations as applicable to the applicant.

I declare that the information given in this form is true and in the event of any information furnished is false, misleading or suppression of facts, my certificate of registration is liable to be cancelled by SEBI without assigning any reasons whatsoever.

.....
 Dated..... Signature

Recommendation of the currency derivatives segment of a stock exchange, clearing corporation/house.

This is to certify that.....is a member of this currency derivatives segment or Clearing Corporation or Clearing House and is recommended for registration with the Securities and Exchange Board of India.

Signature
 Name
 Designation

”

(b) after Form DA, the following Form shall be inserted, namely:-

“FORM DB
Securities and Exchange Board of India (Stock Brokers and Sub-brokers)
Regulations, 1992
 [Regulation 16M]

Certificate of Registration

In exercise of the powers conferred by sub-section (1) of section 12 of the Securities and Exchange Board of India Act, 1992, read with the rules and regulations made thereunder, the Board hereby grants a certificate of registration to a member of thecurrency derivatives segment/clearing corporation/ clearing house as trading /clearing member for carrying on the activities of dealing in currency derivatives /clearing and settlement of currency derivatives trades and for carrying on such other activities as are permitted by such exchange(s)/segment(s)/clearing corporation/clearing house subject to the conditions prescribed therefor, from time to time, by the Board.

Registration number allotted is as under:

.....

This certificate shall be valid till it is suspended or cancelled in accordance with the Regulations.

Date :

By order

.....

For and on behalf of
Securities and Exchange Board of India.

”

(v) After Schedule IV, the following shall be inserted, namely:-

“*SCHEDULE IVA*

[Regulation 16P(1)]

FEES TO BE PAID BY THE TRADING OR CLEARING MEMBER OF CURRENCY DERIVATIVES SEGMENT OF A STOCK EXCHANGE/CLEARING CORPORATION/CLEARING HOUSE

1. A clearing member shall pay a fee of Rs. 50,000 every year till his registration is in force, in the manner specified below:—

(a) for the first financial year along with the application for registration;

(b) for the subsequent financial years before 1st June of that financial year.

2. Every trading member shall pay to the Board, a fee in respect of the transactions undertaken by him on the currency derivatives segment of a recognised stock exchange, at the rate of 0.0002 per cent of his turnover (Rs. 20 per crore).

Explanation.—(A) For the purpose of this clause, the expression ‘turnover’ shall include the value of the trades executed by the trading member on the currency derivatives segment of the recognised stock exchange and of the trades settled on the expiration of currency derivatives contracts.

(B) In case of options contracts, ‘turnover’ shall be computed on the basis of premium traded for the option contracts and in case where the option is exercised or assigned, it shall be additionally computed on the basis of notional value of option contracts exercised or assigned.

3. (1) Every recognised stock exchange shall collect from every trading member and clearing member, the fee payable under clause 2 in respect of his turnover in the currency derivatives segment of that stock exchange in accordance with the provisions of its bye-laws.

(2) The fee collected by a recognised stock exchange under sub-clause (1) during a calendar month shall be paid by the stock exchange to the Board by the fifth working day of the following calendar month.

(3) All recognised stock exchanges shall maintain such registers and furnish such returns or information to the Board in respect of the fee collected under this Schedule, as may be specified by the Board.

(4) Without prejudice to sub-clause (3), a recognised stock exchange shall also be liable to furnish such information or explanations to the Board as may be required by it in respect of fee collected or liable to be collected under this Schedule.

4. A trading member who also acts as a clearing member shall pay the annual fee separately, as applicable to each category as specified in clauses 1 and 2.

5. (1) Nothing contained in clause 3 shall affect the primary liability of a trading member to pay the fees under clause 2 or shall preclude the Board from recovering any such fee remaining unpaid by any trading member directly from him.

(2) Where due to the trading member's default any fee which was liable to be paid on his behalf under clause 3 remains unpaid or is paid belatedly, he shall, without prejudice to any other action that may be taken under the Act, rules or regulations, pay an interest of 15 per cent per annum for every month of delay or part thereof to the Board.

(3) Every trading member shall be liable to furnish such information or explanations to the Board as may be required by it in respect of fee paid or payable under this Schedule.

6. The financial year shall mean the year commencing from 1st April and ending on 31st March of the following year.”

Amendment to the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

4. In the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, in regulation 2, in sub-regulation (1), in clause (g), after the words “a derivative segment” the words “or currency derivatives segment” shall be inserted.

C. B. BHAVE
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADVT III/IV/69-ZB/2008/Exty.]

Footnote:

1. Securities and Exchange Board of India (Stock Brokers And Sub-Brokers) Regulations, 1992, the principal Regulations, was published in the Gazette of India on October 23, 1992 vide GSR No. 780 (E).
2. The Securities and Exchange Board of India (Stock Brokers And Sub-Brokers) Regulations, 1992 were subsequently amended on :-
 - (a) November 28, 1995 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 1995 vide S.O. No. 939 (E).
 - (b) January 5, 1998 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 1998 vide S.O. No. 13 (E).
 - (c) January 21, 1998 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 1998 vide S.O. No. 75 (E).

- (d) December 16, 1998 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Third Amendment) Regulations, 1998 vide S.O. No. 1078 (E).
- (e) July 6, 1999 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 1999 vide S.O. No. 541 (E).
- (f) March 14, 2000 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2000 vide S.O. No. 234 (E).
- (g) March 28, 2000 by the Securities and Exchange Board of India (Appeal to Securities Appellate Tribunal) (Amendment) Regulations, 2000 vide S.O. No. 278 (E).
- (h) August 30, 2000 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 2000 vide S.O. No. 787 (E).
- (i) May 29, 2001 by the Securities and Exchange Board of India (Investment Advice by Intermediaries) (Amendment) Regulations, 2001 vide S.O. No. 476(E).
- (j) November 15, 2001 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2001 vide S.O. No. 1128 (E).
- (k) February 20, 2002 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2002 vide S.O. No. 220 (E).
- (l) September 27, 2002 by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 vide S.O. No. 1045 (E).
- (m) September 23, 2003 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2003 vide S.O. No. 1095 (E).
- (n) November 20, 2003 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 2003 vide F.NO. SEBI/LAD/20795/2003.
- (o) March 10, 2004 by the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 vide S.O. No. 398 (E).
- (p) August 1, 2006 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2006 vide S.O. No. 1235 (E).
- (q) September 7, 2006 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Second Amendment) Regulations, 2006 vide S.O. No. 1447 (E).
- (r) September 25, 2006 by the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Third Amendment) Regulations, 2006 vide S.O. No. 1600 (E).